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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re the Marriage of NATALIE V. BLAIR
and JEFFREY C. BLAIR.

NATALIE V. BLAIR,

Appellant,

v.

JEFFREY C. BLAIR,

Respondent.

A125216

(Contra Costa County
Super. Ct. No. D05-00908)

In a postdissolution proceeding, the trial court denied a wife's motion to reconsider a previous order directing the wife to pay credit card debt and an equalizing payment due under the judgment of dissolution. The wife appeals, and both parties represent themselves on appeal. We affirm the order.

I. FACTS

Natalie V. Blair (Wife) and Jeffrey C. Blair (Husband) were married in 2001 and separated in 2005. They have a son born in 2004. Judgment of dissolution was entered in March 2005, and incorporates a marital settlement agreement on child custody, child support, and the division of community property assets. Pursuant to the marital settlement agreement, which was prepared by Wife's attorney, Wife took title to the family residence and agreed to make an equalizing payment of \$57,000 to Husband. The

parties agreed that each would be responsible for debts incurred after the date of separation.

Husband made a motion in October 2008 to obtain payments due under the marital settlement agreement. In February 2009, the court ordered Wife to pay the equalizing payment with monthly installments, and ordered her to pay credit card debt she incurred after the parties separated. In March 2009, Wife filed a motion to “modify” the court’s order. The court denied the motion in May 2009, and Wife appealed the denial.

II. DISCUSSION

The trial court properly denied Wife’s March 2009 motion to modify the court’s previous order directing payment of postseparation credit card debt and the equalizing payment due under the marital settlement agreement. Wife’s motion was untimely, and without proper basis. A motion asking the court to reconsider and to modify a prior order must be made within 10 days after service of the order. (Code Civ. Proc., § 1008, subd. (a).) The order challenged here was issued on February 19, 2009, and served on February 23, 2009. Wife did not file her motion to modify the order until March 24, 2009, a month after service of the order. Moreover, a motion for reconsideration must be “based upon new or different facts, circumstances, or law,” and accompanied by an affidavit supporting the claimed basis for reconsideration. (Code Civ. Proc., § 1008, subd. (a).) “A motion for reconsideration *cannot* be used simply to ask the court to change its mind.” (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2009) ¶ 7:155.4.) If a party thinks the trial court’s order is wrong, redress lies in appeal—not in filing repetitious motions rearguing the same facts and law.

In any event, Wife’s challenge to the court’s order is meritless. Wife seems to think that Husband is responsible for the credit card debt because the account was in his name, regardless of who charged debt to the card and when. Wife is mistaken. Debts incurred after separation are the debtor spouse’s separate obligation. (Fam. Code, § 910; Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2009) ¶¶ 8:746, 9:104.) Wife believes the creditor’s right to seek payment from Husband as the account

holder settles the question of responsibility for the debt. But the right of a creditor is not determinative of the rights between spouses, and a court should assign the obligation to the spouse who incurred the charges postseparation. (Fam. Code, § 910.) Here, it appears that the contested credit card debt was incurred by Wife postseparation, and thus was properly charged to her. Wife has failed to demonstrate otherwise on appeal. It is Wife's burden, as the appellant, to affirmatively demonstrate error. (*Crummer v. Zalk* (1967) 248 Cal.App.2d 794, 796-797.) Wife has failed to do so by omitting documents from the record on appeal necessary for our review, such as Husband's motion claiming entitlement to payment and his supporting papers. (Cal. Rules of Court, rule 8.122; Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2007) ¶¶ 4:42.) Wife's brief also fails to specify the nature and amount of the disputed credit card debt, and speaks in vague generalities. "[I]t is settled that: 'A judgment or order of the lower court is presumed correct. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.' " (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564, italics omitted.)

Wife has likewise failed to demonstrate any error in the court's enforcement of the equalizing payment set out in the parties' marital settlement agreement and incorporated into the judgment dividing community property assets. Wife appears to argue that the family residence was valued too high, and thus Husband wrongly was allotted a \$57,000 equalizing payment. Wife's argument has no place in opposition to a motion for enforcement of a judgment. A judgment is effective, and enforceable, unless and until the judgment is vacated. Wife never moved to set aside the 2005 judgment, and any motion to vacate the judgment over disputed property valuation at this late date appears groundless and untimely. (Fam. Code, § 2122; *Hogoboom & King, supra*, ¶¶ 16:100 et seq.) Wife was properly ordered to make the equalizing payment.

III. DISPOSITION

The order is affirmed.

Sepulveda, J.

We concur:

Reardon, Acting P.J.

Rivera, J.